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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER				
SHAFFER, RICHARD R				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/730,210

**Applicant(s)**

RICHELSON ET AL.

**Examiner**

Richard Shaffer

**Art Unit**

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 10, 13-17, 21 and 61 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 13-17, 21 and 61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/888)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The amendments to the claims filed on April 22<sup>nd</sup>, 2008 is acknowledged and accepted by the examiner. The previous 35 U.S.C. 112, 1<sup>st</sup> paragraph rejections are overcome and are hereby withdrawn.

***Double Patenting***

It is noted that applicant intends to address the provisional double patenting rejection at a later time. Until that time, the rejection will stand as follows.

Claims 1-8, 10, 15-17, 21 and 61 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 22, 26-33, 35, 36, 42, 54 and 55 of copending Application No. 10/401,997. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference lies in the fact that the copending application recites functionally that the screw retaining means is for use with a bone plate. Therefore, it would have been obvious to one having ordinary skill in the art to have provided a bone plate for the screw retaining means. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 10 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Michelson (US Patent 6,138,550).

Michelson discloses (**Figures 1-97D**) a device comprising:  
**[First Interpretation]** a base plate (**Figures 1-8, 28 and 33**) having an aperture (**14 and 8** together; **12 and 6** together; or **408 and 402** together) defining a through opening; a screw retaining means (**20**) rotatable about a center axis; the center axis extends through the through opening; the screw retaining means having an eccentric internal (towards the center) hole (**22, 412**) with substantially a ring thereabout; when the screw retaining means (**20**) rotates, the eccentric hole rotates between a concentric and eccentric position relative to the through opening (due to the through opening defining multiple centers) which receive screws (**30**); the aperture is aligned along the longitudinal axis as well as being at an acute angle (0 degrees) relative to it; and the retaining mechanism being a washer/disk/clip/ring and is flush with the upper surface of the plate. The retaining mechanism is located in a radially and outwardly recessed grooves in the wall of the aperture.

**[Second Interpretation]** a base plate (**Figures 40-45 and 64-67**) having an aperture (**504**) defining a through opening; a screw retaining means (**Figure 64 or 66**) rotatable about a center axis; the center axis extends through the through opening; the screw retaining means having an eccentric internal (towards the center) hole (**510 or 524**) with substantially a ring thereabout; when the screw retaining means rotates, the eccentric hole rotates between a concentric and eccentric position relative to the through opening (due to the through opening defining multiple centers), one center receives the screw

(30); the aperture is aligned along the longitudinal axis as well as being at an acute angle (0 degrees) relative to it; the retaining mechanism being a washer/disk and is flush with the upper surface of the plate; the retaining mechanism located in a radially and outwardly recessed groove in the wall of the aperture.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson in view of Campbell et al (US Patent 6,602,255).

Michelson discloses all of the claimed limitations (in regard to the first interpretation utilizing the base plate of **Figure 28**) except for a c-shaped retaining mechanism to be collapsible for insertion into the groove of the aperture.

Campbell et al teach the use of a collapsible c-ring for quick insertion while still preventing screw back out. It would have been obvious to one having ordinary skill in the art at the time the invention was made to design a C-shaped ring with protrusions **414** to allow for quick insertion (removing the need to first properly align the retaining mechanism relative to opening **402**) and then allowing one to merely rotate the protrusions **414** to block the screw. This would either hasten surgical time or allow for quick manufacture by including the retaining mechanism initially without the need for time-consuming alignment.

Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson in view of Park (US Patent 5,057,111).

Michelson discloses all of the claimed limitations except for an insert means engaged within said at least one hole for accommodating the bone screw. Park teaches **(Figure 5; Column 2, Lines 20-25; Column 3, Line 29 through Column 4, Line 69)** an insert member **(30)** which prevents stress-shielding. Stress-shielding is a negative effect due to an implant carrying the majority of the load and the bone weakening. It would have been obvious to one of ordinary skill in the art at the time of invention to provide for an insert member as taught by Park to the device of Michelson in order to prevent the implant from stress-shielding the bone.

#### ***Response to Arguments***

Applicant's arguments filed on April 22<sup>nd</sup>, 2008 in regard to Michelson have been fully considered but they are not persuasive. As described in the current Office Action, the recitation of an "internal opening" is deemed disclosed by Michelson. Specifically, the hole is cut into the device towards the center and is partially surrounded by a ring structure of the retaining mechanism.

The remaining arguments are moot in view due to a) 35 U.S.C. 112, 1<sup>st</sup> paragraph being overcome b) the new grounds of rejection (claim 61) necessitated by amendment.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Shaffer whose telephone number is (571)272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard Shaffer/  
Examiner, Art Unit 3733  
/Eduardo C. Robert/  
Supervisory Patent Examiner, Art Unit 3733